HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal Nos.1761 and 1810 of 2005

Writ Appeal No.1761 of 2005

Between:

Trimex Industries Limited rep. by its

Manager and authorized signatory

Sri C. Ramprasad Rao,

… Appellant

And

The A.P. Mineral Development Corporation,

Rep. by its Vice Chairman and Managing Director,

And three others.

… Respondents

Counsel for the appellant: Sri D. Prakash Reddy, Senior Advocate appearing for Smt.W.V.S. Rajeswari

Counsel for respondent No.1: Sri A. Sudershan Reddy, Senior Advocate appearing for Smt.G. Jhansi

Counsel for respondent No.2: Sri S.R. Ashok, Senior Advocate appearing for

Sri S. Chakrapani

Writ Appeal No.1810 of 2005

M/s. Sphera Minerals Private Limited

Rep. by its Manager and authorized signatory

Sri P. Ganganath Babu.

… Appellant

And

The A.P. Mineral Development Corporation,

Rep. by its Vice Chairman and Managing Director,

And another

… Respondents

Counsel for the appellant: Sri D.V. Sitharam Murthy

Counsel for respondent No.1: A. Sudershan Reddy, Senior Advocate appearing for Smt.G. Jhansi

Counsel for respondent No.2: Sri S.R. Ashok, Senior Advocate appearing for

Sri S. Chakrapani

::JUDGMENT::

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February 07, 2006

Per G.S. Singhvi, CJ

Whether the decision of the A.P. Mineral Development Corporation Limited (for short 'the Corporation') to allot 25% of A-Grade barytes to Stone and Slates (P) Limited (respondent No.2) is vitiated by arbitrariness and is violative of Article 14 of the Constitution is the question which arises for determination in these appeals.

For deciding the aforementioned question, we may briefly notice the facts:

In furtherance of Tender Notice No.M&S-44/BAR-LT/2005 issued by the Corporation for sale of about 5 lakh Metric Tonnes (MTs) of A-Grade barytes per annum and about 1.5 lakh MTs of B-Grade barytes per annum for export purpose for a period of three years on Ex-Mangampeta Barytes Mine Stock Yard basis, the appellants and respondent No.2 submitted their respective tenders along with seven other tenderers. The tenders were opened on 20-4-2005 by a committee of seven officers. IBC India Limited, Chennai quoted the highest rate of Rs.1055/- per MT for A-Grade barytes. Respondent No.2 quoted Rs.1051/- per MT and the appellants quoted Rs.1050/- per MT. Gimpex Limited, Chennai quoted Rs.969/- per MT. For B-Grade barytes, the appellants quoted the highest rate of Rs.789/- per MT, respondent No.2 quoted Rs.702/- per MT and Gimpex Limited and Mercury Minerals Limited, Chennai quoted Rs.696/- and Rs.693/- per MT respectively. Thereafter, the Corporation vide letters dated 29-4-2005 called upon the appellants and respondent No.2 to confirm whether they were willing to unconditionally accept the price of Rs.1055/- per MT. All the parties submitted their confirmation. Simultaneously, the appellants challenged the acceptance of the bid of respondent No.2 by asserting that the offer made by it was not unconditional. The Board of Directors of the Corporation did not entertain their protest and accepted the bid of respondent No.2 on the premise that the rate quoted by it was higher than the appellants and the Corporation was not required to take into consideration any condition stipulated separately by way of letter which did not form part of the bid document. As a sequel to the decision of the Corporation, the total quantity of A-Grade barites was allocated

to various bidders in accordance with Clause 6 of the tender notice.

The appellants challenged the allocation of 25% A-Grade barytes to respondent No.2 in Writ Petition Nos.11033 and 11087 of 2005 mainly on the ground of violation of Article 14 of the Constitution by asserting that the conditional offer made by the said respondent could not have been accepted. In the affidavits filed in support of the petitions, it was averred that the committee constituted by the Corporation had opined against acceptance of the bid of respondent No.2, but, without any rhyme or reason, the Board accepted the bid ignoring the fact that the tender notice did not contemplate submission of conditional bid. It was further averred that if the three conditions incorporated in the letter accompanying the tender submitted by respondent No.2 were converted into money, its rate would be far less than the rate quoted by them and, therefore, the decision of the Corporation to allocate 25%
of A-Grade barytes to respondent No.2 is liable to be declared arbitrary and violative of the doctrine of equality.

In the counter-affidavit filed on behalf of the Corporation, it was averred that the price quoted by respondent No.2 was higher than the one quoted by the writ petitioners (appellants herein) and, therefore, no illegality was committed by allocating 25% of the total quantity to the said respondent. According to the Corporation, the distribution of the quantity of A-Grade barytes was done strictly in accordance with the formula incorporated in Clause 6 of the tender notice because all the bidders agreed to enhance their offers to the level of the highest bidder namely IBC India Limited, Chennai. In regard to the forwarding letter sent by respondent No.2, it was averred that the same was not taken into consideration because the conditions stipulated therein did not form part of the bid document.

The learned Single Judge noticed the pleadings of the parties in detail, referred to the judgments of the Supreme Court in **Tata Cellular v. Union of India** and **Asia Foundation and Construction Ltd. v. Trafalgar House Construction (I) Ltd.** and held that the Corporation did not commit any illegality by accepting the offer of respondent No.2. In the opinion of the learned Single Judge, the decision of the Corporation to ignore the conditions stipulated in the letter attached to the bid document of respondent No.2 was quite rationale and the same did not result in violation of any of the tender conditions. Paragraph 17 of the order of the learned Single Judge, which contains reasons for not accepting the plea of the appellants,

reads as under:

> "17. The grievance of M/s.Trimax Industries Limited and M/s.Sphere Minerals Private Limited is that conditional tender offered by 2nd respondent has been accepted. It has come on record that 1st respondent considered the offer made by the 2nd respondent along with the offer made by the writ petitioners and others without taking into account any conditions attached to the tender documents. Had 1st respondent considered the offer made by 2nd respondent subject to conditions, there is every justification in the objection raised by the writ petitioner. Since the offer made by 2nd respondent has been considered by 1st respondent along with the offers made by the writ petitioner and others ignoring the conditions annexed to the tender documents, it is left open to the 1st respondent to consider the offer made by 2nd respondent. In the counter of 1st respondent it is specifically asserted that 1st respondent-corporation is bound to consider only the rates and quantity quoted in the bids submitted by the tenderers and it cannot take into consideration any of the conditions stipulated separately by way of a letter attached to their bid and only the price and quantity offered by the bidder is only acceptable. In view of the specific assertion of 1st respondent that it did not take into consideration any of the conditions stipulated separately, I do not see any substance in the contention of learned counsel for the petitioner that 1st respondent violated any of the tender conditions."

Sri D. Prakash Reddy, Senior Advocate appearing for the appellant in Writ Appeal No.1761 of 2005 and Sri D.V. Sitharama Murthy, Advocate appearing for the appellant in Writ Appeal No.1810 of 2005 extensively referred to the contents of tender notice and vehemently argued that the Corporation committed grave illegality by accepting the conditional offer made by respondent No.2. Sri Reddy emphasized that the letter containing the three conditions specified by respondent No.2 formed an integral part of the bid document and, therefore, the same could not have been overlooked by the Corporation while finalizing the bids. He submitted that if the three conditions specified by respondent No.2 are evaluated in terms of money, then the rate quoted by it would be far less than those of the appellants and the Corporation could not have ignored the conditions and allotted 25% of the quantity to respondent No.2. Learned counsel submitted that the conditional offer made by respondent No.2 could not be treated as responsive bid and, as the same was not capable of being implemented, the Corporation ought to have rejected the same and treated the offer of the appellants in H2 category for the purpose of allocation of A-Grade barytes. Sri

Sitharama Murthy referred to paragraph 84 of the Supreme Court's judgment in **Tata Cellular v. Union of India**[1] (supra) and argued that the decision of the Corporation to accept the conditional offer of respondent No.2 is liable to be declared as non est because the tender notice did not provide for submission of conditional offers. He argued that the decision making process adopted by the Corporation is tainted by arbitrariness and, therefore, even though the action of the Corporation to allot 25% of A-Grade barytes to respondent No.2 may fall in the realm of contract, the Court should invalidate the same by invoking Article 14 of the Constitution of India. Both Sri D. Prakash Reddy and
Sri D.V. Sitharama Murthy heavily relied on Clause (3) of instructions contained in Annexure-2 appended to the tender notice and submitted that the offer made by respondent No.2 should have been rejected by being treated as vague and indefinite.

Sri S.R. Ashok, Senior Advocate appearing for respondent No.2 supported the order of the learned Single Judge and argued that the decision of the Corporation to accept the offer of his client cannot be castigated as arbitrary or unreasonable because the three conditions enumerated in the letter annexed with the bid document did not form part of the offer. Learned counsel emphasized that the appellants have not levelled any allegation of mala fides against the officers of the Corporation and, therefore, this Court cannot sit in appeal over the decision taken by the former in the matter of allotment of different quantities of A-Grade barytes. He pointed out that the rate quoted by respondent No.2 was higher than that of the appellants and, therefore, the allotment of 25%
of A-Grade barytes must be treated as consistent with the terms of tender notice. In support of his arguments, Sri S.R. Ashok relied on the judgments of the Supreme Court in **Asia Foundation & Construction Ltd., v. Trafalgar House Construction (I) Ltd.,**[2] (supra) and **Raunaq International Ltd., v. I.V.R. Construction Ltd.**.

Learned counsel for the Corporation produced the records, which include extracts from the minutes of the 322nd meeting of the Board of Directors held on 25-4-2005 and the original bid documents submitted by the parties and submitted that the decision of the Corporation to ignore the conditions specified in paragraph 12 of the forwarding letter under the heading "price" does not suffer from any legal

infirmity. Learned counsel emphasized that in Appendix-5 which contains the proforma for quoting the price, respondent No.2 did not incorporate any condition and, therefore, the Corporation did not commit any illegality by entertaining its offer.

We have thoughtfully considered the respective submissions and carefully scrutinized the record, including the file and documents produced by the learned counsel for the Corporation.

Before adverting to the arguments of the learned counsel, we consider it proper to mention that even though the matters involving award of contract, grant of largess i.e., permits, quotas, licence etc., by the State and its instrumentalities have been brought within the expansive scope of Article 14 {**Ramana Dayaram Shetty v. International Airport Authority of India**}, the Courts have been very cautious and circumspect in interfering with the discretion exercised by the competent authority in such matters. It has been repeatedly held that the power of judicial review can be exercised in such matters only if the decision making process is flawed or the action of the State or its instrumentality is found to be patently arbitrary resulting in violation of the doctrine of equality embodied in Article 14 of the Constitution or is contrary to law.

In **Sterling Computers Limited v. M/s. M. & N Publications Limited** the Supreme Court considered the scope of judicial review in contractual matters and observed:

> "… In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognised by courts while dealing with public property. It is not possible for courts to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although

not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive."

In **Tata Cellular v. Union of India**[1] (supra) the Supreme Court, after an in depth consideration of various facets of the scope of judicial review of State action observed that the Court must direct its attention to the consideration of following factors:

"1. Whether a decision-making authority exceeded its powers?

2. Committed an error of law,

3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers."

The Supreme Court then reviewed a large number of judicial precedents and deduced the following principles:

"(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

In **Asian Foundation and Construction Ltd., v. Trafalgar House Construction (I) Ltd.**[2] (supra), the Supreme Court cautioned against interference with the decision taken by the competent authority in the matter of award of contract and held:

> "Though the principle of judicial review cannot be denied so far as exercise of contractual power of government bodies are concerned, but it is intended to prevent arbitrariness or favouritism and it is exercised in the larger public interest or if it is brought to the notice of the court that in the matter of award of a contract power has been exercised for any collateral purpose. It is not within the permissible limits of interference for a court of law, particularly when there has been no allegation of malice or ulterior motive and particularly when the court has not found any mala fides or favouritism in the grant of contract in favour of the successful bidder." (emphasis added)

In **Rounaq International Ltd., v. I.V.R. Construction Ltd.,**[3] (supra), the Supreme Court reiterated that the Court can interfere with the award of contract by State or public body only if its action is found to be unfair or contrary to public interest and laid down the following proposition:

> "When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. Price may not always be the sole criterion for awarding a contract. Often when an evaluation committee of experts is appointed to evaluate offers, the expert committee's special knowledge plays a decisive role in deciding which is the best offer. Price offered is only one of the criteria. The past record of the tenderers, the quality of the goods or services which are offered, assessing such quality on the basis of the past performance of the tenderer, its market reputation and so on, all play an important role in deciding to whom the contract should be awarded. At times, a higher price for a much better quality of work can be legitimately paid in order to secure proper performance of the contract and good quality of work – which is as much in public interest as a low price. The court should not substitute its own decision for the decision of an expert evaluation committee." (Emphasis added)

In **Air India Ltd., v. Cochin International Airport Ltd.**, the Supreme Court referred to the earlier judicial precedents on the subject and culled out the following principles:

> 1) The award of a contract by a public body or State is essentially a commercial transaction and in arriving at a commercial decision, the considerations which are paramount are commercial considerations;
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> 2) The State can devise its own method for arriving at a particular decision. It can fix appropriate terms of invitation to tender and the Court cannot interfere with exercise of such discretion;
>
> 3) The State or public body can enter into negotiations before accepting one or the other offer. It can grant relaxation provided that there is a condition in the tender to that effect and there exist good reasons for doing so.
>
> 4) The State and its instrumentalities are bound by the norms laid down by them and cannot depart from such norms arbitrarily.
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> 5) Though the decision to award contract etc., is not amenable to judicial review, the decision making process can be scrutinized by the Court for the purpose of determining whether there has been violation of the doctrine of equality. Where it is found that the decision making process is vitiated by mala fides, unreasonable and arbitrariness, the Court may nullify the decision.
>
> 6) Even when some defect is found in the decision-making process, the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point."

If the correctness of the order under challenge is examined in the light of the above noted principles, we do not find any valid ground to interfere with the discretion exercised by the learned Single Judge not to interfere with the decision of the Corporation to allot 25% of A-Grade barytes to respondent No.2. In our opinion, the learned Single Judge has rightly held that the Corporation did not commit any illegality by accepting the offer of respondent No.2 without taking into consideration the conditions specified in the forwarding letter.

The argument of the learned counsel that the bid given by respondent No.2 could not be treated as responsive because it was hedged with conditions and the same should have been outrightly rejected sounds attractive, but lacks merit and cannot

be accepted. Paragraphs 1, 5 and 6 of the tender notice and paragraphs 2, 3, 5, 6, 7 and 15 of the instructions accompanying the tender notice, which have bearing on the decision of these appeals, read as under:

"**1. Details of Tender:**

The Corporation intends to supply/sell about 5,00,000 MTs of "A Grade" Barytes per annum and about 1,50,000 MTs of "B Grade" Barytes per annum for export purpose for a period of 3 years on Ex-Mangampeta Barytes Mine Stock basis.

5. Minimum Price:

i) A Grade:

The bidder shall not quote a price less than Rs.916 per MT (Rupees nine hundred and sixteen only per metric ton) loose on Ex-Mangampeta mine/stockyard basis exclusive of statutory levies and as per the tender terms and conditions. Bids less than Rs.916 per MT as above shall be invalid.

ii) B Grade:

The bidder shall not quote a price less than Rs.544 per MT (Rupees five hundred and forty four only per metric tonne) loose on Ex-Mangampeta mine/stockyard basis exclusive of statutory levies and as per the tender terms and conditions. Bids less than Rs.544 per MT as above shall be invalid.

6. Award of Tender:

i) The Corporation shall distribute the tendered quantity between H1 to H5 bidders in the ratio of 40:25:15:10:10 respectively subject to the quantity quoted by the bidders whichever is less provided H2 to H5 bidders match their quoted price with that of H1 bidder.

ii) In case two or more bidders quote the same price, the ranking will be done based on the quantities offered to purchase.

iii) In case two or more bidders quote the same price as well as quantity, the tender quantity will be distributed equally.

iv) The bidders have no claim whatsoever for the balance quantity, if any, after distribution and the Corporation reserves the right to dispose the balance quantity as deemed fit."

Instructions to the bidders

2. Submission of bids:

i) Bidders shall submit their tender in two envelopes duly sealed as below:

a) The first envelope superscribed as “Tender No.M&S-44/BAR-LT/05 SUBMISSION OF EMD TO BE OPENED ON 20.04.05 AT 1430 hours shall contain

Appendices 1 to 4 as enclosed to tender schedule duly filled in and signed along with Demand Draft / Banker’s Cheque / Pay Order for Rs.15 lakhs drawn in favour of ‘The A.P. Mineral Development Corporation Ltd.’ and payable at Hyderabad on any Scheduled Bank.

b) The second envelope superscribed as “Tender No. M&S-44/BAR-LT/05 COMMERCIAL BID TO BE OPENED ON 20-04-05AT 1530 hours” shall contain

1) Price bid as per Appendix-5

2) Documents and information to be submitted as per clause 12 of Annexure II.

c) Both the envelopes as above addressed to the Vice-Chairman & Managing Director of the Corporation shall be kept in an outer cover with superscription “Tender No. M&S-44/BAR-LT/05 due on 20-04-05 and should bear the address of the bidder.

d) If the envelope is not sealed and marked as above, the Corporation will assume no responsibility for the misplacement or premature opening of the tender submitted. A tender opened prematurely for this cause will be rejected by the Corporation and returned to the tenderer under certificate of posting.

ii) As per clause 2.1 above, the bidders are required to submit two separate envelopes i.e., E.M.D. and commercial bid. The Corporation shall first open the envelope containing EMD at 1430 hours on 20-04-2005. The second envelope containing commercial bid of those bidders who submitted proper EMD only will be opened at 1530 hours on 20-04-05. The commercial bids of those who did not submit proper EMD will not be opened and shall be returned to them by Regd. Post/Courier. The decision of the Corporation in this regard will be final and binding on the bidders.

iii) The right to reject any tender if failed to comply with the above instructions or otherwise is reserved. Only one bid should be inserted in one cover.

iv) The tender must reach the registered Office of the Corporation at Hyderabad not later than 14.00 hours on 20-04-05. Tender sent by hand delivery should be put in a tender box at the registered office at Hyderabad not later than 14.00 hours on 20-04-05. Tenders if sent by post must be sent under registered cover well in advance so as to reach the concerned by the scheduled time. Tenders received after due date and time of closing will be outrightly rejected. Corporation will not be responsible for the loss of tender or

for transit delays. Bidders are advised in their own interest to ensure that their tenders reach this Office well before the closing date and time of the tender. The Corporation at its discretion may extend the dead line for submission of bids by issuing an amendment in which case all rights and obligations of the Corporation and Bidders previously subject to the original dead line shall thereafter be subject to new deadline as extended.

v) Telex/telegraphic/Fax offers whether received directly by the Corporation or submitted by local agents shall not be considered.

3. Vague and Indefinite expression:

Tenders qualified by vague and indefinite expression such as 'Subject to Immediate Acceptance' etc., will not be considered.

5. Opening of the Tenders:

i) The envelope containing EMD will be opened at 1430 hours on 20-04-05 and the commercial bids of those eligible bidders will be opened at 1530 hours on 20-04-05 as at clause 2. The bidder or his authorized representative is at liberty to be present at the time of opening on the specified dates and time by a letter in the form annexed at Appendix-4 hereto and must be produced in the Office by the person attending the opening of the tender. Unless this letter is presented by him, he may not be permitted to attend to the opening of the bids. Only one person per tender will be allowed to attend the opening.

ii) In case of scheduled holiday on the closing/opening day of the tender, the next working day will be treated as scheduled day of closing/opening of the tender, the time notified remaining the same.

6. The Corporation reserves the right to accept/reject any tender and to annul all the offers and reject all the tenders at any time prior to award of contract without thereby incurring any liability to the affected tenderers or any obligation to inform the affected bidders of the ground for the Corporation's action.

7. Acceptance of Offers:

Acceptance by the Corporation will be communicated by telegram/Fax/Registered letter. The notification of the award will constitute the formation of the contract. The successful bidder shall within 7 days sign a contract with the Corporation submitting PSD as per Cl.9.

15. Clarification in respect of incomplete offers:

The Corporation has to finalise the tender within a limited schedule. Therefore, it may not be feasible in all cases for the Corporation to seek clarifications in respect of incomplete offers. Prospective bidders are advised to ensure that their bids are complete in all respects and conforms to tender

terms and conditions. Bids not complying with the Corporation's requirements may be rejected without seeking any clarifications."

A conjoint reading of the above reproduced conditions of the tender notice and instructions issued by the Corporation show that the same do not provide for rejection of a bid only on the ground that the bidder has incorporated condition in the forwarding letter or any document other than Appendixes 1 to 4 or Appendix-5. The clauses which provide for rejection of the bid do not contemplate that the bid will be rejected if conditions are incorporated in the forwarding letter. In the absence of any such stipulation, we are unable to invalidate the decision of the Corporation to accept the bid of respondent No.2 only on the ground that it had ignored the conditions specified in the forwarding letter. It is not even the case of the appellants that the bid documents submitted by respondent No.2 contained any condition. We have gone through the original tender submitted by respondent No.2 and find that the form prescribed for quoting the price (Appendix-5) did not contain any condition. Para 12 of the forwarding letter sent to the Vice-Chairman and Managing Director of the Corporation did contain three conditions which had bearing on the price factor, but the same were not incorporated in Appendix-5 which forms part of the bid document. This aspect was considered in 322nd meeting of the Board of Directors of the Corporation held on 25-4-2005. The Board noted that the covering letter sent by respondent No.2 did contain a stipulation that the offer is subject to the three conditions and sought the opinion of the Advocate General whether the separate letter could be treated as part of the bid document. The latter opined that the Corporation is bound to consider only the rates and the quantities quoted in the bids submitted by the tenderers and there was no need to consider any other condition separately stipulated by way of a letter which does not form part of the bid document. Accordingly, it was decided to ignore the conditions stipulated in the letter sent by respondent No.2 along with the bid document. In our opinion, the offer made by respondent No.2 cannot be treated as conditional merely because the forwarding letter sent with the bid document contained three conditions having bearing on the price factor because Appendix-5 which formed part of the bid document did not contain any condition.

As a corollary, we hold that the decision of the Corporation to accept the bid of respondent No.2 cannot be dubbed as arbitrary because it is an undisputed position

that the rate quoted by the said respondent was higher than the rate of the appellants. Though the difference in the rates of the parties was only Rs.1/-, but that by itself was sufficient to entitle respondent No.2 to be categorized as H2 for the purpose of allocation of the quantity of A-Grade barytes.

We are further of the view that the tender submitted by respondent No.2 cannot be termed as vague or indefinite merely because the forwarding letter contained three conditions under the heading “price”. The offer of respondent No.2 could have been termed as vague and indefinite only if some condition had been incorporated in the bid document. However, the fact of the matter is that the bid document did not contain any stipulation that respondent No.2 was prepared to accept the allotment only on acceptance of any particular condition.

Before concluding, we deem it imperative to mention that in the writ petition filed by them, the appellants did not make any allegation of ulterior motive or bias against any officer of the Corporation and in the absence of such allegation, the acceptance of the bid of respondent No.2 cannot be nullified on the ground of mala fides.

For the reasons mentioned above, the appeals are dismissed. Interim order dated 26-9-2005 passed in WAMP No.3138 of 2005 (W.A.No.1761 of 2005) stands vacated.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

February 07, 2006

SVS